

REMARKS/ARGUMENTS

Claims 37-44 are under examination in this application. The Office Action mailed on September 22, 2006, includes the following rejections:

1. Claims 37-44 are rejected under 35 U.S.C. 103(a).

Applicants respectfully address the basis for each of the rejections below.

Claims 37-44 are rejected under 35 U.S.C. § 103 as being unpatentable

Applicants respectfully submit that claims 37-44 are not obvious over United States Patent Number 4,752,496 to Fellows, et al., (hereafter referred to as Fellows) in view of United States Patent Number 5,552,869 to Schilli, et al., (hereafter referred to as Schilli) fails to establish a prima facie case of obviousness for numerous reasons and are, therefore, allowable under 35 U.S.C. § 103(a) for the reasons stated below.

First, neither Fellows, nor Schilli are analogous prior art. The MPEP states that, “to rely on a reference under 35 U.S.C. § 103, it must be analogous prior art.” MPEP 2141.01(a). Neither Fellows nor Schilli relate to the type of article of the present invention. Fellows relates to a paper or plastic insert for mailers, while Schilli relates to photocopying/printing of paper materials. As such, the skilled artisan would not look to these arts to apply a scent to an article to bond the scent gel carrier to the article such that the cleaning the article will not remove the scented gel carrier from the article.

Fellows address a different problem with different criteria not suited to the present invention. Fellows teach a method of applying cosmetics to a substrate to allow distribution through the mail as magazine inserts and the like (see Abstract). Fellows provide a method of providing very small quantities of the cosmetics in a sample package by using a film that encompasses the cosmetics and lightly attach the cosmetics to the substrate. The cosmetics (e.g., dry or cohesive powders or oily or emulsion type dispersions or easily meltable pastes, such as lipstick) have a very defined appearance and feel and cannot be allowed to bleed or leak or stain the substrate and must retain its color, feel and appearance under temperatures that reach 150

degrees F (see col. 2, ll. 3-10). Fellows does not teach any scented cosmetic or scented material and any material that is taught by Fellows must be removably attached to the substrate (insert).

Schilli also address a different problem with different criteria not suited to the present invention. Schilli relates to photocopying, printing and electrophotography, especially a drying method and apparatus for use with liquid toners. Schilli teaches an apparatus for continuously removing excess carrier liquid from a photoreceptor. Schilli relates to liquid toners and transferring the toner image from the photoconductor element to a final substrate, such as paper. Schilli is totally unrelated to a method of applying a scent to an article. The materials, the toner, the temperatures, the substrate, etc. are formulated for toner application with no regard for the properties required to applying a scent to an article so that the scent is retained.

It would not have been obvious for a person of ordinary skill in the art of applying a scent to an article by bonding a scent gel carrier to the article such that the cleaning of the article will not remove the scented gel carrier from the article to look to the field of either the field of printing and photocopying (Schilli) or the field of temporary cosmetic application for mailers (Fellows), individually or in any combination. Therefore, Fellows and Schilli are not analogous prior art and cannot be combined or combined with another references.

Second, even if Fellows and Schilli were analogous prior art, which they are not, they would still fail to establish a *prima facie* case of obviousness under 35 U.S.C. § 103(a). The combination of Fellows and Schilli does not disclose, teach or suggest all the claim elements, there is no reasonable expectation of success and there is no suggestion or motivation in the prior art to modify the reference or to combine reference teachings as proposed. See, MPEP § 2143; *In re Vacek*, 947 F.2d 488 (Fed. Cir. 1991).

A *prima facie* case of obviousness has not been established as the cited references lack support for the teaching of all of the elements of the present invention in all of the rejected claims. Follows teach a method of applying cosmetics to a substrate to allow distribution through the inserts. The film forming agent of Fellows does not noticeably alter the appearance or properties of the cosmetic and only provides a weak adhesion that is easily removable

between the particulate and to the substrate. Fellows specifically states that the film

[film] provides only weak adhesion between the particulate and to the substrate so that rubbing one's finger across the exposed microencapsulated cosmetic surface will thereby remove the cosmetic from its substrate (col. 4, ll. 16-26) (emphasis added)

Although Fellows provide a film over the cosmetics, the purpose of the film is to allow the transport of a cosmetic to a consumer where the cosmetic may be easily removed and applied. Fellows teaches the temporary adhesion of a cosmetic to a substrate for transport, that allows ease of removal of the cosmetic from the substrate by the user. Fellows does not teach a scented gel at all and fails to teach the application of a scent to an article such that cleaning the article will not remove the scented gel carrier from the article.

Similarly, Schilli fails to teach a scented gel and fails to teach the application of a scent to an article such that cleaning the article will not remove the scented gel carrier from the article. Schilli merely teaches liquid toners and transferring the toner image from the photoconductor element to a final substrate, such as paper. As such, the combination of Fellows or Schilli must also fail to disclose, teach or suggest all the claim elements of the present invention.

Furthermore, there is no suggestion or motivation in the prior art to modify the reference or to combine reference teachings as proposed and there is no reasonable expectation of success for such a combination. The Action relies on the fact that the elements of the present invention can supposedly be found in the combination of references as the basis for finding both the motivation and suggestion to combine them. There is no citation to anything "concrete" in the record to support either the suggestion to combine the references, the motivation to do so or to provide a reasonable expectation of success for the combination of the temporary cosmetic application for mailers of Fellows and the printing and photocopying of Schilli. The Examiner is respectfully requested to point to on the record such suggestion or motivation to modify the reference and reasonable expectation of success or withdraw the rejection.

Applicants respectfully submit that claims 37-44 are not obvious over the cited art and are, therefore, allowable under 35 U.S.C. § 103(a). Applicants respectfully requests the withdrawal of the rejection of claims 37-44.

Conclusion

In light of the remarks, amendments and arguments presented above, Applicants respectfully submit that the claims in the Application are in condition for allowance. Favorable consideration and allowance of the pending claims 37-44 are therefore respectfully requested.

If the Examiner has any questions or comments, or if further clarification is required, it is requested that the Examiner contact the undersigned at the telephone number listed below.

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Respectfully submitted,



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